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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,428	11/13/2003	Jeannette Louise Smith		7883

7590 06/17/2004
Jeannette L. Smith
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Boise, ID 83704

EXAMINER

FRANCIS, FAYE

ART UNIT	PAPER NUMBER
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3712

DATE MAILED: 06/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/706,428	Applicant(s) SMITH, JEANNETTE LOUISE	
	Examiner Faye Francis	Art Unit 3712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) ____ is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the cans of paint, paintbrush, roller, roller tray, pieces of paper, stamps and stamp pad in claim 2 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The

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replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

3. The numbering of claims does not comply with the Rules. It is noted that claims 1 and 2 on page 3 of the claims has been marked as dependent claims by the applicant. However, if these claims are in fact dependent claims their dependency must be indicated in the claims, for example, "the play house kit of claim 1 further comprising...".

Misnumbered depend claims 1 and 2 have been renumbered 4 and 5 respectively.

A claim, which depends from a dependent claim, should not be separated by any claim, which does not also depend from said dependent claim. It should be kept in mind that a dependent claim may refer to any preceding independent claim. In general, applicant's sequence will not be changed. See MPEP § 608.01(n).

4. Claim 5 is objected to because of the following informalities: applicant has not used proper tense, i.e. "A playhouse which will have a roof" because the use of the future tense implies that it has not happened yet. Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 3 and 5 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. All that the applicant considers to be encompassed by the word "lip" cannot be determined from the specification.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

8. Claims 1-5 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure, which goes to make up the device, must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

With respect to claim 1: the phrase "melamine or similar material" is vague as used. It is not clear what similar material the applicant referring to.

With respect to claim 2: regarding "may" in lines 1 and 5, it makes the claim language confusing since it is not clear if applicant is claiming the feature that follows this phrase or not. This terminology is repeated throughout the claims.

With respect to claim 2: a broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 2 recites the broad recitation cans of paint, and the claim also recites watercolor, which is the narrower statement of the range/limitation.

Claims 3 and 5 are indefinite since all that the applicant considers to be encompassed by the phrase "lip" cannot be determined.

With respect to claim 4: the phrase "additional materials" is vague as used. It is not clear what additional materials the applicant referring to.

With respect to claim 4, the phrase "such as" in line 2 renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim 4 is indefinite because it is not clear what the phrases "a cedar look", "shake look roofing" and "slats" are intended to encompass.

With respect to claim 5: regarding "can be" in line 1, it makes the claim language confusing since it is not clear if applicant is claiming the feature that follows this phrase or not.

In view of the examples above, the applicant is required to carefully review all of the claims in order to correct those having the same defects but not specifically pointed to.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 2 is rejected under 35 U.S.C. 102(b) as being anticipated by Winston.

The claim is interpreted as best understood by the examiner. The claim is interpreted as requiring paint [ink], paintbrush [tip 174], roller 160a and roller tray 160b, paper, stamp 162, and stamp pad 168b. Winston is considered to clearly show a device having all of the structural elements of the claim.

5. Claim 3 is rejected under 35 U.S.C. 102(b) as being anticipated by Dodge.

The claim is interpreted as best understood by the examiner. The claim is interpreted as requiring a playhouse with corner pieces [connector strips 22] at two corners or more, made to allow for the insertion of wall panels at a 90-degree angle.

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Dodge is considered to clearly show a device having all of the structural elements of the claim.

6. Claim 4 is rejected under 35 U.S.C. 102(b) as being anticipated by Becker.

The claim is interpreted as best understood by the examiner. The claim is interpreted as requiring a playhouse that includes additional materials to alter its appearance, such as brick look, shake look roofing and square stone look tiles [Figs 1 and 4]. Becker is considered to clearly show a device having all of the structural elements of the claim.

7. Claim 5 is rejected under 35 U.S.C. 102(b) as being anticipated by Zimmer.

The claim is interpreted as best understood by the examiner. The claim is interpreted as requiring a playhouse having a roof that is made of four connecting pieces connecting together with tabs 14L and slots 20A. Zimmer is considered to clearly show a device having all of the structural elements of the claim.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dodge in view of Walmer.

Dodge discloses most of the elements of this claim in including a playhouse kit comprised of at least four walls, one side including a window [square piece 13], one

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side including a doorway [rectangular piece 20], a back wall and a side wall with no windows or doors [Fig 1a], a roof being comprised of four separate pieces.

Dodge may disclose a floor member.

Walmer teaches that providing a toy house with a floor member is conventional. It would have been obvious to one of ordinary skill in the art at the time the invention was made, in view of Walmer to provide the device of Dodge with a floor member to make the device more realistic and more enjoyable for the children to play with.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Conclusion

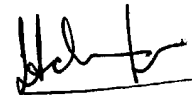
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faye Francis whose telephone number is 703-306-5941. The examiner can normally be reached on M-F 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 703-308-1745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FF



Jacob K. Ackun
Primary Examiner